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May 17, 2010

Via Electronic Filing

The Honorable Dennis M. Cavanaugh, U.S.D.J.
United States District Court
Martin Luther King Building & U.S. Courthouse
Room PO-04
50 Walnut Street
Newark, NJ 07101

Re: *Eli Lilly and Company v. Actavis et al.*, Civil Action No. 07-3770 (DMC)(MF)

Dear Judge Cavanaugh:

On behalf of Eli Lilly and Company (“Lilly”), we respond to defendants’ May 14, 2010, letter. Lilly respectfully asks the Court to deny defendants’ improper attempt to request reconsideration of their motion *in limine* relating to IND 46,806 (D.E. 582), on which the Court specifically “reserve[d] judgment.” (D.E. 621 at 13.)

As Defendants admit in their letter, whether the evidence is admissible “appears to remain open subsequent to the Court’s issuance of its recent Opinion.” (May 14, 2010, Letter from A. Calmann at 1.) The Court recognized that a number of documents defendants attempt to exclude are “public documents that would likely be judicially noticeable” and thus, reserved judgment on their admissibility. (D.E. 621 at 13.)

As the defendants are fully aware, this Court has held previously that certain contemporaneous evidence of the obligations, knowledge and actions of persons of skill in the art may be admissible on this issue. (E.g., D.E. 494 at 33, D.E. 621 at 3.)

Defendants have already caused an inordinate amount of time and resources to be spent in their attempt to obtain a prejudgment on this issue. Lilly respectfully submits that this issue should be decided at the time the evidence is presented to the Court as held in the May 13, 2010, Opinion on the motions *in limine*.

Respectfully submitted,

Laura P. Masurovsky

cc: All Counsel of Record